

STATE OF OREGON                   )  
County of Multnomah         ) ss:                   AFFIDAVIT OF JOHN DEAN

# Affidavit in Support of a Criminal Complaint

I, John Dean, being duly sworn, do hereby depose and state as follows:

## Introduction and Agent Background

1. I, John Dean, am a Senior Special Agent in the United States Department of Homeland Security (DHS), Office of Management (OM), assigned to the Federal Protective Service (FPS), Arctic Northwest Region, in Auburn, Washington. I have been a Special Agent with FPS for twenty-two (22) years. Prior to my becoming a Special Agent, I had been a Police Officer with FPS for four (4) years. Prior to my employment with the FPS, I was a Police Sergeant with the Department of Defense Police for three (3) years, and a Security Policeman with the United States Air Force for six (6) years. I have attended, and graduated, formal training academies for each of the organizations listed. Additionally, I have received formal, informal, and experience-based training on the conduct of general investigative duties throughout my career. Part of my duties entails the response to and investigation of, threats to individuals and Government organizations, on Government property, theft of Government property, and damage to Government property.

2. I submit this affidavit in support of a criminal complaint and arrest warrant for Cody Levi MELBY. As set forth below, I have probable cause to believe MELBY caused damage to a federal building, namely the Mark O. Hatfield United States Courthouse, in violation of Title 18 United States Code § 1361.

3. The facts set forth in this affidavit are based on the following: my own personal knowledge, knowledge obtained from other individuals during my participation in this

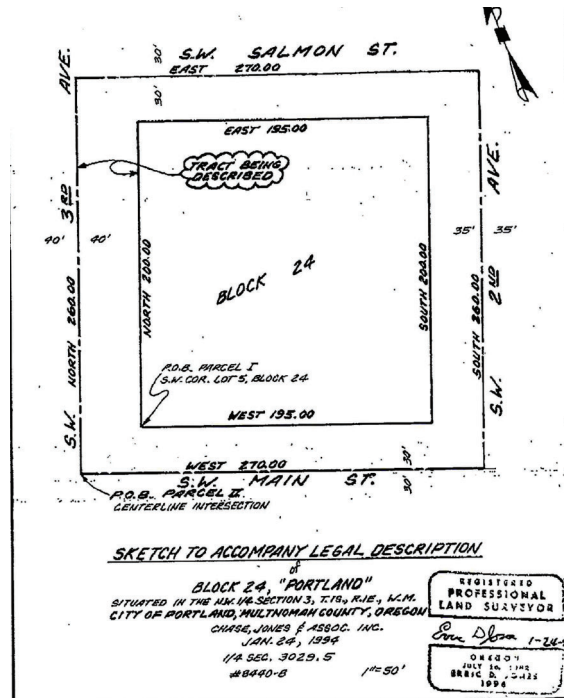
investigation, including other law enforcement officers including Oregon State Police Troopers, and FBI special agents (Investigators), interviews of witnesses, my review of records related to this investigation, communication with others who have knowledge of the events and circumstances described herein, and information gained through my training and experience. Because this affidavit is submitted for the limited purpose of establishing probable cause in support of the application for an arrest warrant, it does not set forth each fact that I or others have learned during this investigation.

#### **Applicable Law**

4. 18 U.S.C. § 1361 states in pertinent part that it is unlawful to willfully injure or commits any depredation of against any property of the United States, or of any department or agency thereof, or attempts to do so. This offense is punishable by a fine and imprisonment of up to 10 years if the property damage exceeds the sum of \$1,000. If the damage is less than \$1,000 the offense is punishable by a fine and imprisonment not to exceed 1 year.

#### **Statement of Probable Cause**

5. Due to protest activity that began in May 2020, a fence was built around the Mark O. Hatfield United States Courthouse in Portland Oregon to prevent vandalism and criminal activity including assaults on federal officers and secure the building after hours. The United States of America owns the entire city block (Block #24) occupied by the Hatfield Courthouse, as depicted below. Easements have been granted for the sidewalks surrounding the Hatfield Courthouse, but the property boundary extends past the sidewalks and into the streets surrounding the courthouse.



6. The Hatfield Courthouse has experienced significant damage to the façade and building fixtures during the six weeks following that incident. Additionally, mounted building security cameras and access control devices have been vandalized or stolen. A metal fence reinforced by concrete barriers has been constructed around the front and two sides of the Hatfield Courthouse to deter vandalism and secure the building. The Hatfield Courthouse's stone façade and windows have been covered in plywood to protect them from damage. Other federal properties in the area routinely being vandalized include the historic Pioneer Federal Courthouse, the Gus Solomon Courthouse, and the Edith Green Wendall Wyatt Federal Office Building. FPS law enforcement officers, Deputy U.S. Marshals, and other federal law enforcement officers working to protect the Hatfield Courthouse have been subjected to threats, aerial fireworks (including mortars), high intensity lasers targeting officers' eyes, thrown rocks,

bottles, and balloons filled with paint, and vulgar language from demonstrators while performing their duties.

***MELBY Shoots at the Hatfield Courthouse***

7. On January 8, 2021, at approximately 7:35 pm, a Court Security Officer (CSO-1)<sup>1</sup> working at the Mark O. Hatfield Federal Courthouse, located in Portland, OR, observed a lone white male individual standing in the covered foyer area in the front of the courthouse via the closed circuit video system installed in the courthouse. There were no protests in the vicinity of the Courthouse at the time of this entry, however this area was closed to the public and fenced off from the surrounding area of downtown Portland by the fence described above. CSO-1 thought the individual, later identified as Cody L. Melby (MELBY) was a court employee who had gotten stuck in the fenced area by exiting the interior of the court building into the fenced area and allowing the door to close behind them. CSO-1 directed CSO-2 and CSO-3 to contact the individual and assist them. CSO-2 and CSO-3 left the courthouse and entered the fenced area on the side of the building, traversed the area to front of the building, and observed MELBY standing under the covered portion of the front entrance. CSO-3 approached MELBY, who began walking towards him. CSO-3 stated he addressed MELBY asking, “Who the fuck are you and what are you doing?” MELBY did not respond and continued walking towards CSO-3. CSO-3 repeated his question, at which time MELBY was approximately five yards away from him. MELBY then stated, “I have a gun” at which point CSO-2 and CSO-3 drew their own firearms and took MELBY into custody without incident.

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<sup>1</sup> The names and identities of the Court Security Officers, witnesses and government employees are known to me. I have withheld their identities for their security, and to prevent them from being subject to threats, online harassment, and doxing.



9. CSO-3 stated he asked MELBY what MELBY was doing, and MELBY stated he had been firing his gun. CSO-3 asked MELBY where he had fired his gun, and MELBY stated he had been “in the front for 20 minutes and no one came out, so I fired several times into the ground.” CSO-3 stated he confirmed with MELBY he had only fired his bullets into the ground and not into the building. CSO-3 asked MELBY where he had gotten into the fence line, and MELBY indicated the fence at Main and Third Ave. CSO-3 Keefe asked MELBY why he was

there and MELBY replied, “Because I am tired of all the shit you guys have to take.” CSO-2 and CSO-3 then escorted MELBY into the temporary detention area within the courthouse, searched his person for weapons or means of escape, removed his belt and shoes, and placed him in a holding cell. CSO-2 and CSO-3 then returned to the front of the courthouse area and observed several shell casings on the ground in the area.

10. At 7:51 p.m. FPS Inspectors arrived at Hatfield Courthouse and contacted the CSO witnesses and begin their investigation. The FPS Inspectors began looking for evidence and located 5 spent 9mm bullet casings, 3 spent projectiles, and what appeared to be 3 bullet holes in the plywood-covered columns at the front of the courthouse, and damage to a metal soffit on the underside of the overhang over the building entrance, approximately 20 feet from the ground. The images below are photos of the what the Inspectors believe are bullet strikes to building and plywood protecting the courthouse’s stone façade:











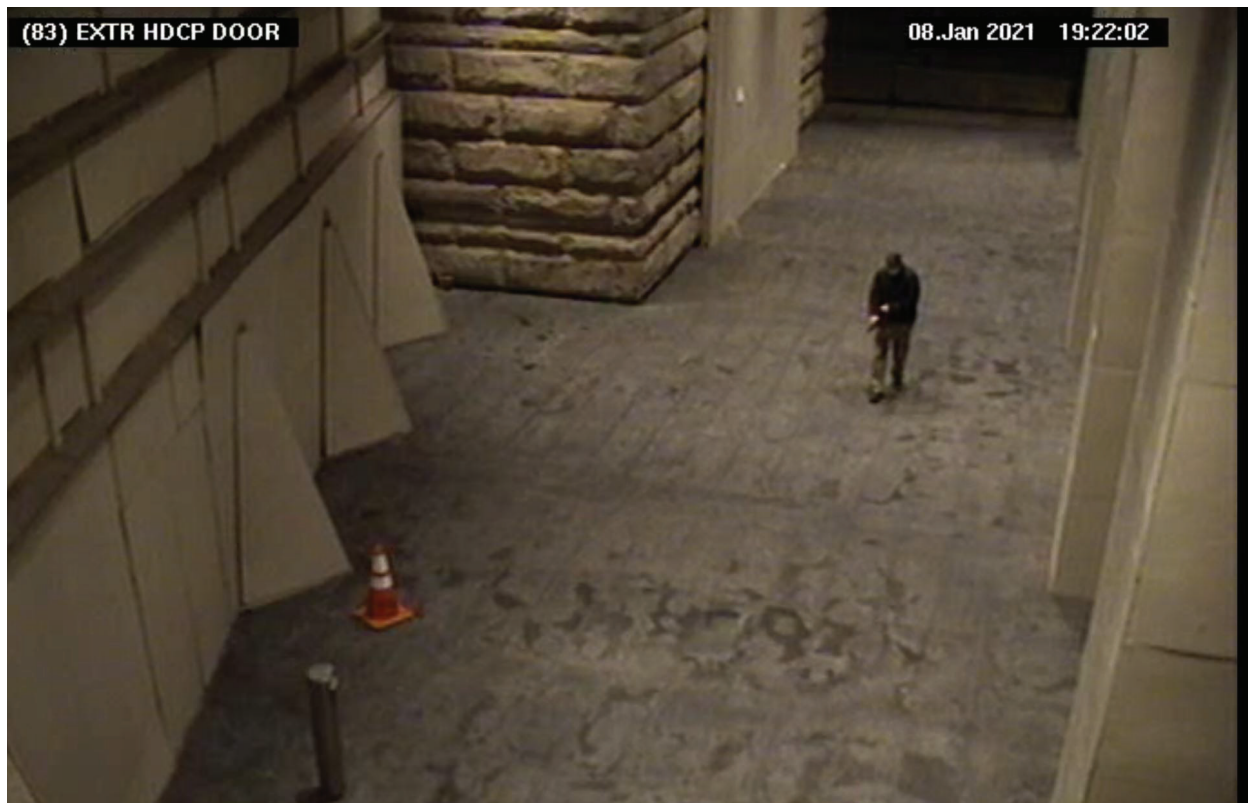


13. The Hatfield Courthouse has a Closed-Circuit Video (CCV) system. Investigators have reviewed the footage captured by these cameras. The images below are screen captures

depicting the events recorded (all times are approximate and based on the time stamps on the cameras being viewed):

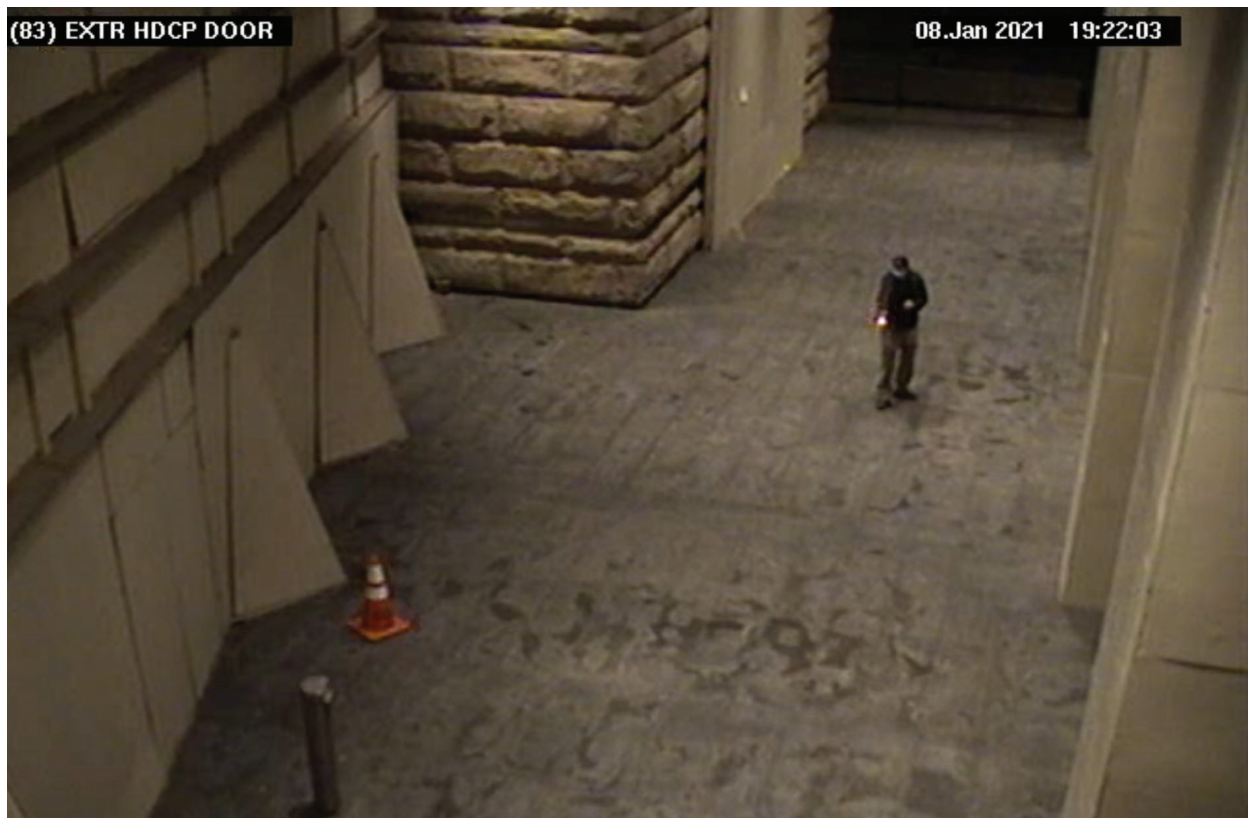


*Timestamp: 7:20PM MELBY inside of the protective fence walking west along the south side of the courthouse.*



*Timestamp: 7:22PM MELBY removing a firearm from his waist area and charging the weapon. MELBY is standing underneath the awning, inside of the columns and close to the boarded-up entry to the Hatfield Courthouse.*





*Timestamp: 7:22PM MELBY standing underneath the awning, inside of the columns and close to the boarded-up entryway of the MHFC. Muzzle flash is visible in the photo.*

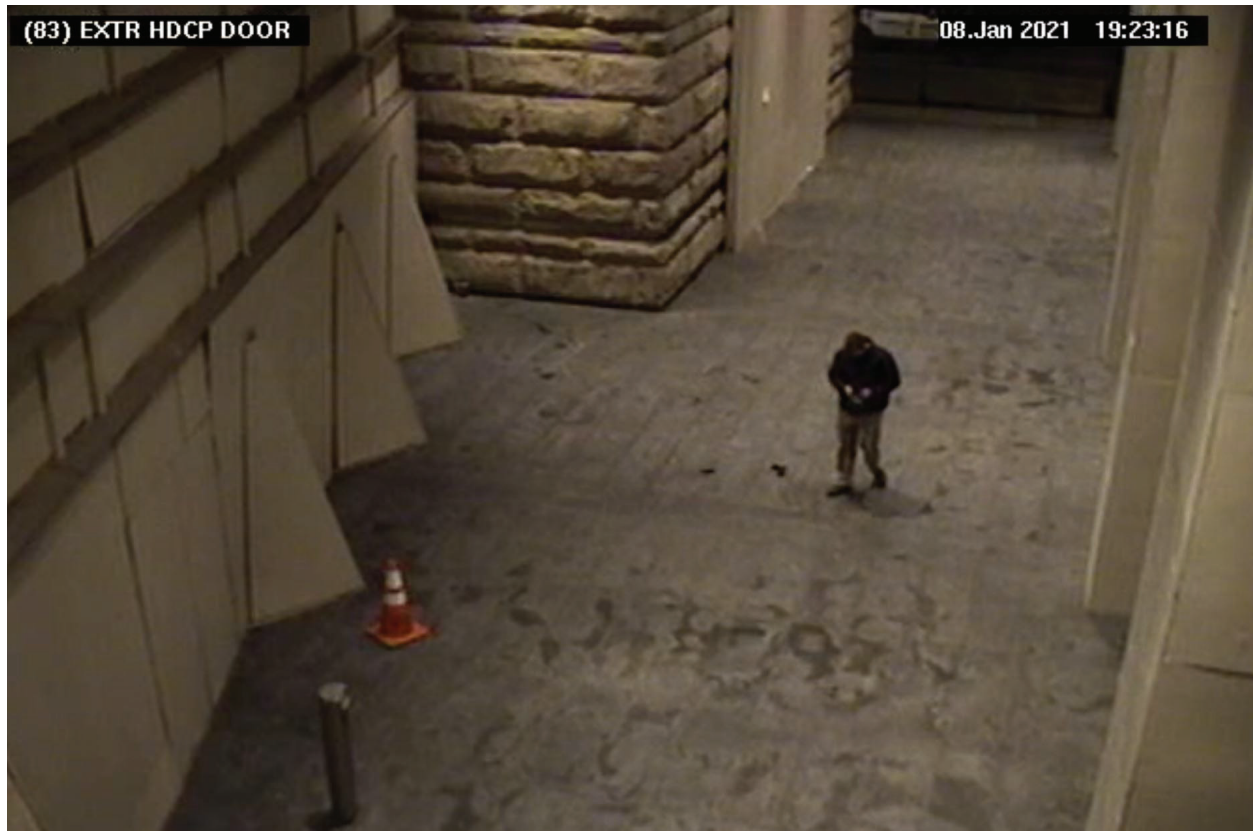




*Timestamp: 7:22PM MELBY placing the firearm on the ground magazine was ejected from the firearm.*



*Timestamp 7:22PM MELBY leaving the firearm on the ground and walking away, remaining inside of the protective fence.*



*Timestamp: 7:23PM MELBY holding an object that appears to be his cellular phone standing next to the firearm on the ground.*

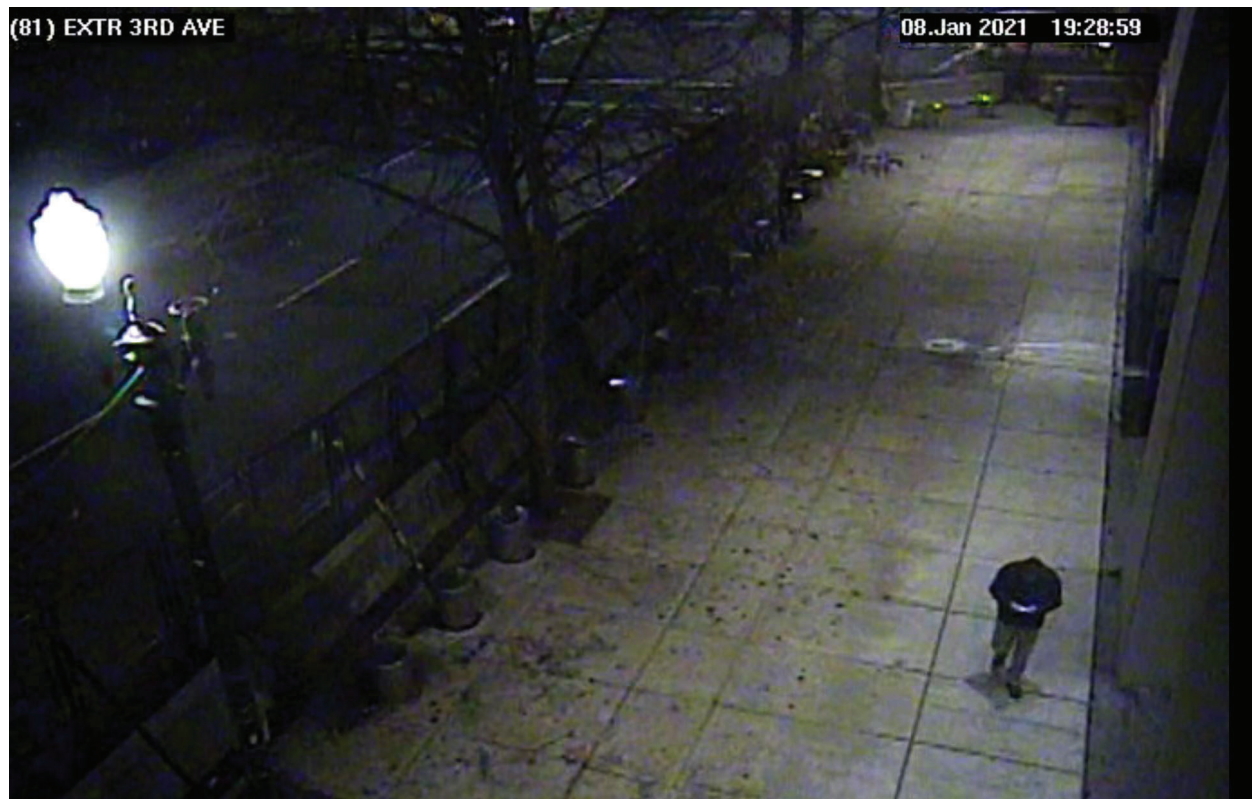


*Timestamp: 7:27PM MELBY retrieving the firearm and magazine from the ground.*





*Timestamp: 7:27PM MELBY placing the firearm into a holster on his right hip.*



*Timestamp: 7:28PM MELBY looking down at an object in his hands, which appears to be a cellular phone. MELBY is walking around the pillars that are part of the front of the MHFC.*



*Timestamp: 7:30PM MELBY using what appears to be a cellular telephone.*



*Timestamp: 7:32PM MELBY is seen walking along the south side of the courthouse.*

***MELBY's "Official Election Statement" from January 5, 2021***

14. Investigators discovered a YouTube channel titled "Cody MELBY" during their investigation. The channel appears to have been started on or about October 24, 2006, had 17 subscribers and contained four videos that were posted by the account owner. In several of these videos, MELBY makes statements that subscribe to the "Alt-Right" ideology of "Stop the Steal" and QAnon conspiracy theories. The most recent video, "Official Election Statement", was posted on January 5, 2021. This video shows MELBY reading a statement, from several pieces of yellow notebook paper, directly into a camera. The camera is tilted upwards and shows MELBY from just above the waist to his head. MELBY is wearing a black Patagonia jacket, a



flannel pattern shirt and glasses. In the background of the video is a building that appears to be the Oregon State Capitol in Salem, Oregon. Below is a screen capture from the YouTube video:



15. MELBY addresses the statement to, "My fellow Americans." MELBY describes his background, qualifications and prior military service information. Following that MELBY states that "an illegal coup attempt" that has "weakened our nation and public confidence in our constitution" and subverted the democratic process. He describes the events around the 2020 presidential election as an attack on the very foundation of our republic and a "theft of votes." MELBY states, "multiple state governments and federal agencies have committed treason

against the United States." MELBY asserts that multiple politicians have committed treason, rebellion, insurrection, sedition, advocated the overthrow of the government and have established unconstitutional mask mandates. MELBY calls for the arrest of many politicians and several U.S. citizens including, but not limited to, President-Elect Joe Biden, Governor Kate Brown, Mayor Ted Wheeler, Governor Gavin Newsom, Mayor Jenny Durkin, Anderson Cooper, Don Lemon, and Mark Zuckerberg.

16. The video continues with MELBY calling on President Trump to institute the Insurrection Act. "The insurrection act will be led by the veteran community with Marines and National Guard support. Senior NCOs can begin effectively arresting traitors to our republic." MELBY further stated, "all detainees are to be treated with dignity and respect." MELBY stated that city and state officials have allowed "Antifa to grow into a terrorist organization" and their leadership should be held accountable for attacks and murders that took place across the country. Later in the video, MELBY stated that Antifa is an international terrorist organization due to their training with ISIS. MELBY stated, Black Lives Matter is a Marxist organization and that the Black Lives Matter leadership is akin to the KKK.

17. The Youtube video continues with MELBY stating that police reform is needed, and that the military and veteran community should take the lead on police reform. MELBY says the mainstream and social media are responsible for suppressing the views and speech of Americans and that they have suppressed and altered the context of statements made by President Trump. MELBY stated that the National Firearms Act (NFA) should not be needed for

"veterans and properly trained citizens." MELBY voiced displeasure about not being allowed to own carbines/rifles with 10-inch barrels. MELBY stated, "Mine is purpose built."

18. On January 8, 2021 MELBY was interviewed in the holding cell at the Courthouse by FPS Special Agent (SA) Dean and Oregon State Police Detective One (OSP-1). MELBY was advised of his rights via an FPS-produced Rights Warning form. MELBY indicated he understood the advisement via signature on the form. When asked if he wanted to discuss the incident, MELBY stated "No." SA Dean asked MELBY if he would grant permission to search his car. MELBY stated "go for it." SA Dean provided MELBY with an FPS-produced Consent to Search form, which MELBY indicated agreement with and signed. Later, MELBY'S car was located nearby and searched pursuant to his consent. Nothing was seized from his car.

19. As SA Dean and MELBY were discussion the search of the car, MELBY pointed at OSP-1 and stated "you were talking to me the other day about me wanting to overthrow the government" OSP-1 then stated, "would you be willing to talk to me about that or any other stuff and not just this?" MELBY stated he would. OSP-1 then advised MELBY of his rights under *Miranda* again. OSP-1 asked MELBY if he understood his rights, and MELBY stated he did. OSP-1 then asked MELBY if he would be willing to talk to him, and MELBY stated "yeah." MELBY and OSP-1 spoke for approximately 20 minutes after this point, however I am not asking the Court to rely on those statements to establish probable cause for this application.

### ***Damages to Federal Property***

20. Government Services Agency Witness One (GSA-1), is a GSA official responsible for managing the Hatfield Courthouse facility. According to GSA-1, without

removing the plywood protecting the stone façade, GSA-1 is unable to determine if the stone under the plywood was damaged from the bullet strikes. GSA-1 stated that if the stone or any of the metal around the Courthouse were damaged from the bullet strikes, GSA-1 believes the repair cost would be greater than \$1,000. GSA-1 stated the extent of the damages would not be known for certain until workers are able to remove the plywood on Monday, January 11, 2021 and assess the damage to the stone.

### **Conclusion**

20. Based on the foregoing, I have probable cause to believe that Cody Levi MELBY attempted to maliciously damage by means of a firearm, the Hatfield Courthouse, a building wholly owned and used by the United States, in violation of 18 U.S.C § 1361. I therefore request that the Court issue a criminal complaint and arrest warrant charging MELBY with that offense.

21. Prior to being submitted to the Court, this affidavit, the accompanying complaint and the arrest warrant were all reviewed by Assistant United States Attorney (AUSA) Paul

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Maloney. AUSA Maloney informed me that in his opinion, the affidavit is legally and factually sufficient to establish probable cause to support the issuance of the requested criminal complaint and arrest warrant.

/s/ Sworn to by telephone

John Dean

Senior Special Agent

Federal Protective Service

Sworn to by telephone or other reliable means in accordance with Fed. R. Crim. P. 4.1 at

11:54 am/~~pm~~ on January 10, 2021.

*Youlee Jim You*

HONORABLE YULEE YIM YOU

United States Magistrate Judge